



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4839

Introduced 1/12/2010, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102
775 ILCS 5/7B-102

from Ch. 68, par. 7A-102
from Ch. 68, par. 7B-102

Amends the Illinois Human Rights Act. Provides that the Department of Human Rights may (instead of shall) conduct a fact finding conference under specified circumstances. Provides that, in proceedings other than those involving real estate transactions, notices concerning the complainant's right to file a complaint with the Human Rights Commission or commence a civil action shall be sent by the Department of Human Rights by regular mail (instead of certified or registered mail). Effective immediately.

LRB096 15966 AJO 31211 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Sections 7A-102 and 7B-102 as follows:

6 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)
7 Sec. 7A-102. Procedures.

8 (A) Charge.

9 (1) Within 180 days after the date that a civil rights
10 violation allegedly has been committed, a charge in writing
11 under oath or affirmation may be filed with the Department
12 by an aggrieved party or issued by the Department itself
13 under the signature of the Director.

14 (2) The charge shall be in such detail as to
15 substantially apprise any party properly concerned as to
16 the time, place, and facts surrounding the alleged civil
17 rights violation.

18 (A-1) Equal Employment Opportunity Commission Charges. A
19 charge filed with the Equal Employment Opportunity Commission
20 within 180 days after the date of the alleged civil rights
21 violation shall be deemed filed with the Department on the date
22 filed with the Equal Employment Opportunity Commission. Upon
23 receipt of a charge filed with the Equal Employment Opportunity

1 Commission, the Department shall notify the complainant that he
2 or she may proceed with the Department. The complainant must
3 notify the Department of his or her decision in writing within
4 35 days of receipt of the Department's notice to the
5 complainant and the Department shall close the case if the
6 complainant does not do so. If the complainant proceeds with
7 the Department, the Department shall take no action until the
8 Equal Employment Opportunity Commission makes a determination
9 on the charge. Upon receipt of the Equal Employment Opportunity
10 Commission's determination, the Department shall cause the
11 charge to be filed under oath or affirmation and to be in such
12 detail as provided for under subparagraph (2) of paragraph (A).
13 At the Department's discretion, the Department shall either
14 adopt the Equal Employment Opportunity Commission's
15 determination or process the charge pursuant to this Act.
16 Adoption of the Equal Employment Opportunity Commission's
17 determination shall be deemed a determination by the Department
18 for all purposes under this Act.

19 (B) Notice and Response to Charge. The Department shall,
20 within 10 days of the date on which the charge was filed, serve
21 a copy of the charge on the respondent. This period shall not
22 be construed to be jurisdictional. The charging party and the
23 respondent may each file a position statement and other
24 materials with the Department regarding the charge of alleged
25 discrimination within 60 days of receipt of the notice of the
26 charge. The position statements and other materials filed shall

1 remain confidential unless otherwise agreed to by the party
2 providing the information and shall not be served on or made
3 available to the other party during pendency of a charge with
4 the Department. The Department shall require the respondent to
5 file a verified response to the allegations contained in the
6 charge within 60 days of receipt of the notice of the charge.
7 The respondent shall serve a copy of its response on the
8 complainant or his representative. All allegations contained
9 in the charge not timely denied by the respondent shall be
10 deemed admitted, unless the respondent states that it is
11 without sufficient information to form a belief with respect to
12 such allegation. The Department may issue a notice of default
13 directed to any respondent who fails to file a verified
14 response to a charge within 60 days of receipt of the notice of
15 the charge, unless the respondent can demonstrate good cause as
16 to why such notice should not issue. The term "good cause"
17 shall be defined by rule promulgated by the Department. Within
18 30 days of receipt of the respondent's response, the
19 complainant may file a reply to said response and shall serve a
20 copy of said reply on the respondent or his representative. A
21 party shall have the right to supplement his response or reply
22 at any time that the investigation of the charge is pending.
23 The Department shall, within 10 days of the date on which the
24 charge was filed, and again no later than 335 days thereafter,
25 send by regular ~~certified or registered~~ mail written notice to
26 the complainant and to the respondent informing the complainant

1 of the complainant's right to either file a complaint with the
2 Human Rights Commission or commence a civil action in the
3 appropriate circuit court under subparagraph (2) of paragraph
4 (G), including in such notice the dates within which the
5 complainant may exercise this right. In the notice the
6 Department shall notify the complainant that the charge of
7 civil rights violation will be dismissed with prejudice and
8 with no right to further proceed if a written complaint is not
9 timely filed with the Commission or with the appropriate
10 circuit court by the complainant pursuant to subparagraph (2)
11 of paragraph (G) or by the Department pursuant to subparagraph
12 (1) of paragraph (G).

13 (B-1) Mediation. The complainant and respondent may agree
14 to voluntarily submit the charge to mediation without waiving
15 any rights that are otherwise available to either party
16 pursuant to this Act and without incurring any obligation to
17 accept the result of the mediation process. Nothing occurring
18 in mediation shall be disclosed by the Department or admissible
19 in evidence in any subsequent proceeding unless the complainant
20 and the respondent agree in writing that such disclosure be
21 made.

22 (C) Investigation.

23 (1) After the respondent has been notified, the
24 Department shall conduct a full investigation of the
25 allegations set forth in the charge.

26 (2) The Director or his or her designated

1 representatives shall have authority to request any member
2 of the Commission to issue subpoenas to compel the
3 attendance of a witness or the production for examination
4 of any books, records or documents whatsoever.

5 (3) If any witness whose testimony is required for any
6 investigation resides outside the State, or through
7 illness or any other good cause as determined by the
8 Director is unable to be interviewed by the investigator or
9 appear at a fact finding conference, his or her testimony
10 or deposition may be taken, within or without the State, in
11 the same manner as is provided for in the taking of
12 depositions in civil cases in circuit courts.

13 (4) Upon reasonable notice to the complainant and the
14 respondent, the Department may ~~shall~~ conduct a fact finding
15 conference prior to 365 days after the date on which the
16 charge was filed, unless the Director has determined
17 whether there is substantial evidence that the alleged
18 civil rights violation has been committed or the charge has
19 been dismissed for lack of jurisdiction. If the parties
20 agree in writing, the fact finding conference may be held
21 at a time after the 365 day limit. Any party's failure to
22 attend the conference without good cause shall result in
23 dismissal or default. The term "good cause" shall be
24 defined by rule promulgated by the Department. A notice of
25 dismissal or default shall be issued by the Director and
26 shall notify the relevant party that a request for review

1 may be filed in writing with the Commission within 30 days
2 of receipt of notice of dismissal or default.

3 (D) Report.

4 (1) Each charge shall be the subject of a report to the
5 Director. The report shall be a confidential document
6 subject to review by the Director, authorized Department
7 employees, the parties, and, where indicated by this Act,
8 members of the Commission or their designated hearing
9 officers.

10 (2) Upon review of the report, the Director shall
11 determine whether there is substantial evidence that the
12 alleged civil rights violation has been committed. The
13 determination of substantial evidence is limited to
14 determining the need for further consideration of the
15 charge pursuant to this Act and includes, but is not
16 limited to, findings of fact and conclusions, as well as
17 the reasons for the determinations on all material issues.
18 Substantial evidence is evidence which a reasonable mind
19 accepts as sufficient to support a particular conclusion
20 and which consists of more than a mere scintilla but may be
21 somewhat less than a preponderance.

22 (3) If the Director determines that there is no
23 substantial evidence, the charge shall be dismissed by
24 order of the Director and the Director shall give the
25 complainant notice of his or her right to seek review of
26 the dismissal order before the Commission or commence a

1 civil action in the appropriate circuit court. If the
2 complainant chooses to have the Human Rights Commission
3 review the dismissal order, he or she shall file a request
4 for review with the Commission within 30 days after receipt
5 of the Director's notice. If the complainant chooses to
6 file a request for review with the Commission, he or she
7 may not later commence a civil action in a circuit court.
8 If the complainant chooses to commence a civil action in a
9 circuit court, he or she must do so within 90 days after
10 receipt of the Director's notice.

11 (4) If the Director determines that there is
12 substantial evidence, he or she shall notify the
13 complainant and respondent of that determination. The
14 Director shall also notify the parties that the complainant
15 has the right to either commence a civil action in the
16 appropriate circuit court or request that the Department of
17 Human Rights file a complaint with the Human Rights
18 Commission on his or her behalf. Any such complaint shall
19 be filed within 90 days after receipt of the Director's
20 notice. If the complainant chooses to have the Department
21 file a complaint with the Human Rights Commission on his or
22 her behalf, the complainant must, within 14 days after
23 receipt of the Director's notice, request in writing that
24 the Department file the complaint. If the complainant
25 timely requests that the Department file the complaint, the
26 Department shall file the complaint on his or her behalf.

1 If the complainant fails to timely request that the
2 Department file the complaint, the complainant may only
3 commence a civil action in the appropriate circuit court.

4 (E) Conciliation.

5 (1) When there is a finding of substantial evidence,
6 the Department may designate a Department employee who is
7 an attorney licensed to practice in Illinois to endeavor to
8 eliminate the effect of the alleged civil rights violation
9 and to prevent its repetition by means of conference and
10 conciliation.

11 (2) When the Department determines that a formal
12 conciliation conference is necessary, the complainant and
13 respondent shall be notified of the time and place of the
14 conference by registered or certified mail at least 10 days
15 prior thereto and either or both parties shall appear at
16 the conference in person or by attorney.

17 (3) The place fixed for the conference shall be within
18 35 miles of the place where the civil rights violation is
19 alleged to have been committed.

20 (4) Nothing occurring at the conference shall be
21 disclosed by the Department unless the complainant and
22 respondent agree in writing that such disclosure be made.

23 (5) The Department's efforts to conciliate the matter
24 shall not stay or extend the time for filing the complaint
25 with the Commission or the circuit court.

26 (F) Complaint.

1 (1) When the complainant requests that the Department
2 file a complaint with the Commission on his or her behalf,
3 the Department shall prepare a written complaint, under
4 oath or affirmation, stating the nature of the civil rights
5 violation substantially as alleged in the charge
6 previously filed and the relief sought on behalf of the
7 aggrieved party. The Department shall file the complaint
8 with the Commission.

9 (2) If the complainant chooses to commence a civil
10 action in a circuit court, he or she must do so in the
11 circuit court in the county wherein the civil rights
12 violation was allegedly committed. The form of the
13 complaint in any such civil action shall be in accordance
14 with the Illinois Code of Civil Procedure.

15 (G) Time Limit.

16 (1) When a charge of a civil rights violation has been
17 properly filed, the Department, within 365 days thereof or
18 within any extension of that period agreed to in writing by
19 all parties, shall issue its report as required by
20 subparagraph (D). Any such report shall be duly served upon
21 both the complainant and the respondent.

22 (2) If the Department has not issued its report within
23 365 days after the charge is filed, or any such longer
24 period agreed to in writing by all the parties, the
25 complainant shall have 90 days to either file his or her
26 own complaint with the Human Rights Commission or commence

1 a civil action in the appropriate circuit court. If the
2 complainant files a complaint with the Commission, the form
3 of the complaint shall be in accordance with the provisions
4 of paragraph (F)(1). If the complainant commences a civil
5 action in a circuit court, the form of the complaint shall
6 be in accordance with the Illinois Code of Civil Procedure.
7 The aggrieved party shall notify the Department that a
8 complaint has been filed and shall serve a copy of the
9 complaint on the Department on the same date that the
10 complaint is filed with the Commission or in circuit court.
11 If the complainant files a complaint with the Commission,
12 he or she may not later commence a civil action in circuit
13 court.

14 (3) If an aggrieved party files a complaint with the
15 Human Rights Commission or commences a civil action in
16 circuit court pursuant to paragraph (2) of this subsection,
17 or if the time period for filing a complaint has expired,
18 the Department shall immediately cease its investigation
19 and dismiss the charge of civil rights violation. Any final
20 order entered by the Commission under this Section is
21 appealable in accordance with paragraph (B)(1) of Section
22 8-111. Failure to immediately cease an investigation and
23 dismiss the charge of civil rights violation as provided in
24 this paragraph (3) constitutes grounds for entry of an
25 order by the circuit court permanently enjoining the
26 investigation. The Department may also be liable for any

1 costs and other damages incurred by the respondent as a
2 result of the action of the Department.

3 (4) The Department shall stay any administrative
4 proceedings under this Section after the filing of a civil
5 action by or on behalf of the aggrieved party under any
6 federal or State law seeking relief with respect to the
7 alleged civil rights violation.

8 (H) This amendatory Act of 1995 applies to causes of action
9 filed on or after January 1, 1996.

10 (I) This amendatory Act of 1996 applies to causes of action
11 filed on or after January 1, 1996.

12 (J) The changes made to this Section by this amendatory Act
13 of the 95th General Assembly apply to charges filed on or after
14 the effective date of those changes.

15 (Source: P.A. 94-146, eff. 7-8-05; 94-326, eff. 7-26-05;
16 94-857, eff. 6-15-06; 95-243, eff. 1-1-08.)

17 (775 ILCS 5/7B-102) (from Ch. 68, par. 7B-102)

18 Sec. 7B-102. Procedures.

19 (A) Charge.

20 (1) Within one year after the date that a civil rights
21 violation allegedly has been committed or terminated, a
22 charge in writing under oath or affirmation may be filed
23 with the Department by an aggrieved party or issued by the
24 Department itself under the signature of the Director.

25 (2) The charge shall be in such detail as to

1 substantially apprise any party properly concerned as to
2 the time, place, and facts surrounding the alleged civil
3 rights violation.

4 (B) Notice and Response to Charge.

5 (1) The Department shall serve notice upon the
6 aggrieved party acknowledging such charge and advising the
7 aggrieved party of the time limits and choice of forums
8 provided under this Act. The Department shall, within 10
9 days of the date on which the charge was filed or the
10 identification of an additional respondent under paragraph
11 (2) of this subsection, serve on the respondent a copy of
12 the charge along with a notice identifying the alleged
13 civil rights violation and advising the respondent of the
14 procedural rights and obligations of respondents under
15 this Act and shall require the respondent to file a
16 verified response to the allegations contained in the
17 charge within 30 days. The respondent shall serve a copy of
18 its response on the complainant or his representative. All
19 allegations contained in the charge not timely denied by
20 the respondent shall be deemed admitted, unless the
21 respondent states that it is without sufficient
22 information to form a belief with respect to such
23 allegation. The Department may issue a notice of default
24 directed to any respondent who fails to file a verified
25 response to a charge within 30 days of the date on which
26 the charge was filed, unless the respondent can demonstrate

1 good cause as to why such notice should not issue. The term
2 "good cause" shall be defined by rule promulgated by the
3 Department. Within 10 days of the date he receives the
4 respondent's response, the complainant may file his reply
5 to said response. If he chooses to file a reply, the
6 complainant shall serve a copy of said reply on the
7 respondent or his representative. A party shall have the
8 right to supplement his response or reply at any time that
9 the investigation of the charge is pending.

10 (2) A person who is not named as a respondent in a
11 charge, but who is identified as a respondent in the course
12 of investigation, may be joined as an additional or
13 substitute respondent upon written notice, under
14 subsection (B), to such person, from the Department. Such
15 notice, in addition to meeting the requirements of
16 subsections (A) and (B), shall explain the basis for the
17 Department's belief that a person to whom the notice is
18 addressed is properly joined as a respondent.

19 (C) Investigation.

20 (1) The Department shall conduct a full investigation
21 of the allegations set forth in the charge and complete
22 such investigation within 100 days after the filing of the
23 charge, unless it is impracticable to do so. The
24 Department's failure to complete the investigation within
25 100 days after the proper filing of the charge does not
26 deprive the Department of jurisdiction over the charge.

1 (2) If the Department is unable to complete the
2 investigation within 100 days after the charge is filed,
3 the Department shall notify the complainant and respondent
4 in writing of the reasons for not doing so.

5 (3) The Director or his or her designated
6 representative shall have authority to request any member
7 of the Commission to issue subpoenas to compel the
8 attendance of a witness or the production for examination
9 of any books, records or documents whatsoever.

10 (4) If any witness whose testimony is required for any
11 investigation resides outside the State, or through
12 illness or any other good cause as determined by the
13 Director is unable to be interviewed by the investigator or
14 appear at a fact finding conference, his or her testimony
15 or deposition may be taken, within or without the State, in
16 the same manner as provided for in the taking of
17 depositions in civil cases in circuit courts.

18 (5) Upon reasonable notice to the complainant and the
19 respondent, the Department may ~~shall~~ conduct a fact finding
20 conference, unless prior to 100 days from the date on which
21 the charge was filed, the Director has determined whether
22 there is substantial evidence that the alleged civil rights
23 violation has been committed. A party's failure to attend
24 the conference without good cause may result in dismissal
25 or default. A notice of dismissal or default shall be
26 issued by the Director and shall notify the relevant party

1 that a request for review may be filed in writing with the
2 Commission within 30 days of receipt of notice of dismissal
3 or default.

4 (D) Report.

5 (1) Each investigated charge shall be the subject of a
6 report to the Director. The report shall be a confidential
7 document subject to review by the Director, authorized
8 Department employees, the parties, and, where indicated by
9 this Act, members of the Commission or their designated
10 hearing officers.

11 The report shall contain:

12 (a) the names and dates of contacts with witnesses;

13 (b) a summary and the date of correspondence and
14 other contacts with the aggrieved party and the
15 respondent;

16 (c) a summary description of other pertinent
17 records;

18 (d) a summary of witness statements; and

19 (e) answers to questionnaires.

20 A final report under this paragraph may be amended if
21 additional evidence is later discovered.

22 (2) Upon review of the report and within 100 days of
23 the filing of the charge, unless it is impracticable to do
24 so, the Director shall determine whether there is
25 substantial evidence that the alleged civil rights
26 violation has been committed or is about to be committed.

1 If the Director is unable to make the determination within
2 100 days after the filing of the charge, the Director shall
3 notify the complainant and respondent in writing of the
4 reasons for not doing so. The Director's failure to make
5 the determination within 100 days after the proper filing
6 of the charge does not deprive the Department of
7 jurisdiction over the charge.

8 (a) If the Director determines that there is no
9 substantial evidence, the charge shall be dismissed
10 and the aggrieved party notified that he or she may
11 seek review of the dismissal order before the
12 Commission. The aggrieved party shall have 30 days from
13 receipt of notice to file a request for review by the
14 Commission. The Director shall make public disclosure
15 of each such dismissal.

16 (b) If the Director determines that there is
17 substantial evidence, he or she shall immediately
18 issue a complaint on behalf of the aggrieved party
19 pursuant to subsection (F).

20 (E) Conciliation.

21 (1) During the period beginning with the filing of
22 charge and ending with the filing of a complaint or a
23 dismissal by the Department, the Department shall, to the
24 extent feasible, engage in conciliation with respect to
25 such charge.

26 When the Department determines that a formal

1 conciliation conference is feasible, the aggrieved party
2 and respondent shall be notified of the time and place of
3 the conference by registered or certified mail at least 7
4 days prior thereto and either or both parties shall appear
5 at the conference in person or by attorney.

6 (2) The place fixed for the conference shall be within
7 35 miles of the place where the civil rights violation is
8 alleged to have been committed.

9 (3) Nothing occurring at the conference shall be made
10 public or used as evidence in a subsequent proceeding for
11 the purpose of proving a violation under this Act unless
12 the complainant and respondent agree in writing that such
13 disclosure be made.

14 (4) A conciliation agreement arising out of such
15 conciliation shall be an agreement between the respondent
16 and the complainant, and shall be subject to approval by
17 the Department and Commission.

18 (5) A conciliation agreement may provide for binding
19 arbitration of the dispute arising from the charge. Any
20 such arbitration that results from a conciliation
21 agreement may award appropriate relief, including monetary
22 relief.

23 (6) Each conciliation agreement shall be made public
24 unless the complainant and respondent otherwise agree and
25 the Department determines that disclosure is not required
26 to further the purpose of this Act.

1 (F) Complaint.

2 (1) When there is a failure to settle or adjust any
3 charge through a conciliation conference and the charge is
4 not dismissed, the Department shall prepare a written
5 complaint, under oath or affirmation, stating the nature of
6 the civil rights violation and the relief sought on behalf
7 of the aggrieved party. Such complaint shall be based on
8 the final investigation report and need not be limited to
9 the facts or grounds alleged in the charge filed under
10 subsection (A).

11 (2) The complaint shall be filed with the Commission.

12 (3) The Department may not issue a complaint under this
13 Section regarding an alleged civil rights violation after
14 the beginning of the trial of a civil action commenced by
15 the aggrieved party under any State or federal law, seeking
16 relief with respect to that alleged civil rights violation.

17 (G) Time Limit.

18 (1) When a charge of a civil rights violation has been
19 properly filed, the Department, within 100 days thereof,
20 unless it is impracticable to do so, shall either issue and
21 file a complaint in the manner and form set forth in this
22 Section or shall order that no complaint be issued. Any
23 such order shall be duly served upon both the aggrieved
24 party and the respondent. The Department's failure to
25 either issue and file a complaint or order that no
26 complaint be issued within 100 days after the proper filing

1 of the charge does not deprive the Department of
2 jurisdiction over the charge.

3 (2) The Director shall make available to the aggrieved
4 party and the respondent, at any time, upon request
5 following completion of the Department's investigation,
6 information derived from an investigation and any final
7 investigative report relating to that investigation.

8 (H) This amendatory Act of 1995 applies to causes of action
9 filed on or after January 1, 1996.

10 (I) The changes made to this Section by this amendatory Act
11 of the 95th General Assembly apply to charges filed on or after
12 the effective date of those changes.

13 (Source: P.A. 94-326, eff. 7-26-05; 94-857, eff. 6-15-06;
14 95-243, eff. 1-1-08.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.